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D-1112 R1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
Jeffery M. Enright, et al.)	
)	
Application No.: 09/414,290)	Art Unit 3692
)	
Confirmation No.: 3095)	
)	
Filed: October 7, 1999)	Patent Examiner
)	John Scarito
)	
Title: Remote Viewing of ATM)	
Transaction Records)	

Mail Stop Express Abandonment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR EXPRESS ABANDONMENT OF APPLICATION

This Application is hereby expressly abandoned (37 CFR 1.138). The abandonment of this application does not constitute an admission that the Examiner's position is correct. Applicants continue to respectfully disagree with the rejections. Applicants contend that the claims are patentable. Additional remarks follow.

Applicants respectfully decline to participate in Office-caused prolonged prosecution. The record shows that prosecution was yet again reopened following further appeal by the Applicants. The record also shows that the Examiner still has not identified a *valid* reason for claim rejection. The pending requirement for restriction is further without merit.

The restriction requirement is not only legally incorrect but it is also not timely. That is, the time for a restriction requirement has long expired. Even the legal community recognizes

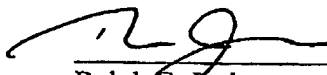
that the restriction requirement is legally improper. For example, note the published article entitled *The "Serious Burden" Requirement Has Teeth -- A Prohibition on Restriction Requirements Later in Prosecution*, Intellectual Property Today, February 2009. The article indicates that in Technology Center 3600, an allegation of "serious burden" cannot be relied upon by an Examiner when requiring an election involving claims which were previously twice rejected. Applicants respectfully submit that the current stage of prosecution is way beyond the twice rejected stage.

The numerous actions on the merits (including prosecution reopenings) along with the latest allegation of a need for restriction appear to be an effort to deny Applicants judicial review of the refusal to grant their application. Such agency action constitutes an abuse of agency authority and violates the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.* Such agency action also violates the fundamental legal principle that an administrative agency may not avoid review of its actions by engaging in repetitive activity which does not remain in place long enough to enable judicial review. *Southern Pacific Terminal Co. v. Interstate Commerce Com.*, 219 U.S. 498, 55 L.Ed. 310, 31 S. Cr. 279 (1911).

Again, Applicants respectfully decline to participate in continued Office-caused prolonged prosecution even though the Examiner's positions are legally improper.

Respectfully submitted,

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